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NOVEMBER / DECEMBER 2020

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A Business Aviation Media, Inc. Publication

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# NPO, NGO, VPO, Go!

## Keep Your Volunteer Flights Legal

BY SCOTT ASHTON

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As an aircraft owner with a small FAR Part 91 flight department, you've been approached by a friend who's been flying for one of the Volunteer Pilot Organizations (VPO), to get you involved. The missions sound compelling – using your aircraft to provide transportation for those in need aligns with your charitable nature and you look forward to participating in such a noble mission, so you sign your flight department up with your local VPO (See "Care and Share in the Air," BAA March/April 2019).

You are well aware that receiving compensation for providing transportation to the public creates an illegal 135 charter situation. But can using your aircraft for volunteer flying create a situation that is, in fact, illegal charter?

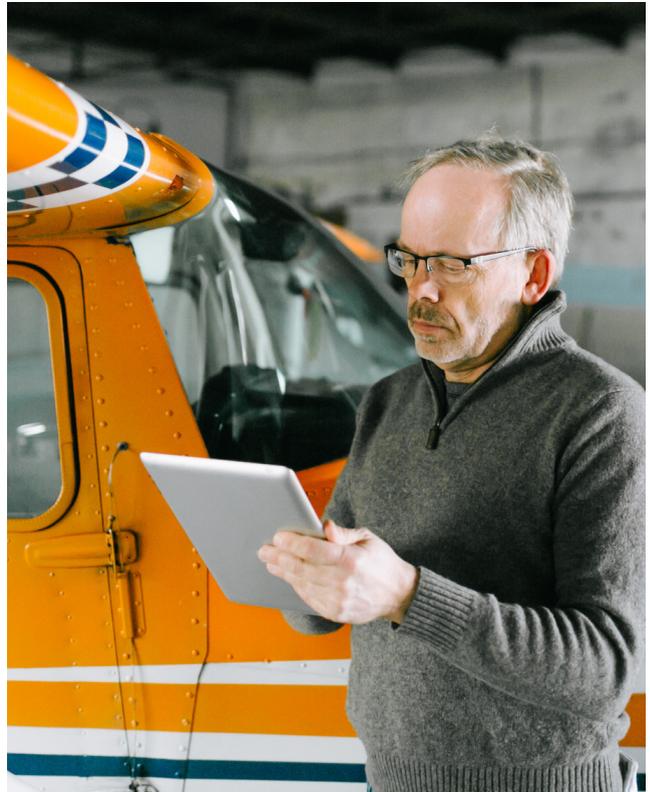
The answer is yes. However, with an understanding of specific FAA legal interpretations, it is easy to do good while doing it right.

First, as the aircraft owner and operator, you must pay all costs associated with the volunteer flight. You cannot accept free fuel or any other kind of financial (or non-financial) compensation. Even charitable fundraising cannot be used to subsidize your flights. Of course, fundraising can support the organizations that arrange the flights, but you cannot create a contribution fund among your friends to help pay for your fuel, even if the funds go directly to the FBO and not to the operator of the aircraft.

In fact, until a 2005 FAA ruling, you could not even take a tax deduction for the cost of the flight. Of "compensation for hire," the FAA says: "It does not require a profit, a profit motive, or the actual payment of funds. Instead, compensation is the receipt of *anything of value* (FAA emphasis)." "Anything of value" is broadly interpreted to include free flight time or even business goodwill. If you are an owner-pilot, the rules are straightforward.

With the exception of a tax deduction for the direct expenses incurred on the charitable flight, you cannot receive any compensation. As the pilot and aircraft operator, you must pay all of the expenses associated with the flight. There is no grey area. Nor can a VPO raise funds to support the operating costs of an aircraft it owns and provides to pilots to fly missions. Air Care Alliance Board member Rick Durden states: "A charity that owns an airplane to further its mission of transporting sick children for medical treatment isn't using that airplane in a way that's incidental to its business – it's the core reason for the organization's existence." Such flying is considered air transportation for hire and requires an operating certificate issued under FAR Part 119.

But what if you have a professional crew flying your aircraft and you are not the pilot? Your pilots are being compensated since they are on your payroll. Are such flights legal?



"Assuming the flights are incidental to the operator's primary activities, there is no issue in general with this structure," said aviation attorney Paul A. Lange. "The aircraft owner in this case is directing the flight, paying all the costs, and choosing which charitable flights to conduct. As long as the operator is not accepting any compensation for the flight, the flight is legal even if the owner's pilots are being paid by the owner." Lange cautions, however, that even slightly altered facts can quickly push you into the realm of illegal charter. It's always best to consult your aviation counsel before conducting any VPO flights.

Charitable flying reflects the best of the business aviation industry. Using our time, talents, and aircraft to bring relief to those in need is very rewarding. Just be sure that the only compensation you receive is the gratitude of patients and families, or of disaster victims receiving supplies. That is compensation enough! **BAA**



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